IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2420 OF 2003.
IN
SUIT NO. 2610 OF 2003

Indrajeet Deviprasad Mishra.] .. Plaintiff

Versus

1. M/s. Conwood Construction & Anr.] .. Defendant

Mr.Sushil Chaurasia i/b A.M. Saraogi for plaintiff.

Mr.Paras Mhambrey for defendant No.1.

Mr.Parimal K. Shroff for defendant No.2.

CORAM: ANOOP V. MOHTA, J.

DATED: 14TH SEPTEMBER, 2005

P.C. :

1. Heard. The present suit dated 24th June, 2003, filed by the plaintiff is for restoration of possession of 9 rooms used for the purpose of residence and also for one additional room used for running the Ration shop and plot situated at Umerseth Pada, Beh.Doordarshan Society, Gen.A.K. Vaidya Marg, Gokuldham, Goregaon (E), Mumbai-63. Plaintiff has also prayed for various declarations based on the documents.

This, therefore, *prima facie*, appears to be a suit for restoration of possession of the premises in question as mentioned in the Plaint, as well as, in the Notice of Motion. The present Notice of Motion No.2420 of 2003 has been taken out along with this suit, basically for prayers of injunction, restraining defendants from developing the plot land admeasuring 144 Sq. mtrs. situated at Umerseth Pada, Gen. A.K. Vaidya Marg, Gokuldham, Goregaon (E), Mumbai-64 i.e. the land in question. The second prayer is for an appointment of a Receiver with specific direction to put the plaintiff in possession of the said plot with further prayer for a permission to make temporary structure on the said plot land.

2. In support of the Notice of Motion, there is an Affidavit with vague averments and without disclosing the necessary events and the material documents to support the case as sought to be made out. The averments made in the Affidavit in no way are sufficient to grant any interim relief as prayed in terms of prayer clauses (a) and (b). The Court, therefore, by order dated 10th September, 2003, rightly observed as follows:

> "Considering at the prima facie stage the declaration-cum-indemnity which is placed before the Court by the Defendant this

will not be a fit case to grant any ad-interim relief."

3. The learned counsel appearing for defendant No.2 pointed out the Affidavit dated 2nd September, 2003, to oppose the said Notice of Motion. The history, as well as, the earlier background, apart from a declaration-cum-indemnity bond, has been referred to by the learned Judge while refusing to grant ad-interim. I have also gone through the said declaration-cum -indemnity bond dated 7th May, 2003. These documents demonstrate that there is no case made out by the plaintiff for grant of any ad-interim relief. There is a clear suppression of facts based on this background about disclaimer of the rights on the plot and property in question.

4. The learned counsel appearing for the defendants have also made statement that the rooms in question have already been demolished and the development activity of the said plot has been going on. Therefore, nothing survives at this stage to grant any order in terms of prayer clauses (a) and/or (b).

5. This is a case for restoration of possession of the premises. If the premises in question itself do not exist on the date of the decision of this Notice of

Motion, there is no question of grant of any restoration as prayed. Admittedly, there was no injunction order passed at the relevant time in terms of prayer clause (a). The plot itself is in developing stage. Now, there is no question of grant of prayer clause (a) based on the above circumstances. So far as prayer clause (b) is concerned, in view of the above statements and the above observation, no case is made out for grant of any relief in terms of prayer clause (b) to the extent of appointment of a Receiver. The plaintiff will get his rights, as prayed, only after the final decision based on the evidence and material after the trial and not at this interim stage.

6. In view of this, Notice of Motion is dismissed. No order as to costs.

[ANOOP V. MOHTA, J.]

[srpasha@hc]